

BOISE, FRIDAY, JANUARY 13, 2012 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

LESLIE BENZ,

Plaintiff-Respondent,

vs.

D.L. EVANS BANK,

Defendant-Appellant,

and

**EAST AVENUE BLUFF, LLC, an Idaho limited
liability company; TIMELESS DESIGN
COMPANY; CLIFF R. IVERSON, dba LEI'S
CUSTOM TILE; FISHER APPLIANCE, INC.;
VIEWPOINT, INC.; CAD DRAFTING SYSTEMS,
INC.; BUCKHORN ELECTRIC, LLC/DEVILAN
HAIRE; A.C. HOUSTON LUMBER COMPANY;
MIKE PUNNETT; PRECISION PLUMBING, INC.;
WATSON BUILDERS, INC.; HARRIS
REFRIGERATION HEATING AND ELECTRIC;
FERGUSON ENTERPRISES, INC.; ROCKY
MOUNTAIN HARDWARE, INC.; SWEET'S
PORTABLE WASTE SERVICES, LLC; WHITE
BUILDERS, LLC; MIKE'S WELDING AND
METAL WORKS, LLC; SENTINEL FIRE &
SECURITY, INC.; STEVE McCOY, dba McCOY'S
PAINTING; CHRISTOPHER BRENNAN, dba
BRENNAN'S CARPET; and PAUL COOPER, dba
SUN VALLEY DRYWALL,**

Defendants.

Docket No. 37814

Appeal from the District Court of the Fifth Judicial District, State of Idaho in and
for Blaine County. Hon. Robert J. Elgee, District Judge.

Parsons, Smith, Stone, Loveland & Shirley, LLP, Burley, for Appellant.

Luboviski, Wygle, Fallowfield & Ritzau, P.A., Ketchum, for Respondent.

This is an appeal of an order granting summary judgment for Leslie Benz on a vendee's lien action against D.L. Evans Bank, awarding her a \$750,000.00 vendee's lien, plus prejudgment interest, and an attorney fee award as a discovery sanction against the Bank for failure to admit.

Ms. Benz signed a real estate purchase agreement to buy a townhome in Ketchum, Idaho for \$2,743,500.00 with East Avenue Bluff, LLC, a real estate development company owned by her friends, John and Stacey Rutherford. The Agreement required three separate nonrefundable prepayments, over five months, totaling \$750,000.00.

After Ms. Benz's first two payments, East Avenue Bluff approached the Bank for a construction loan. After consideration of the nature of the deal and the risk, the Bank gave East Avenue Bluff a \$2,650,000.00 loan, secured by a deed of trust on the property.

Before construction was completed, the Rutherford's declared bankruptcy. The parties discovered that nearly 20 businesses had unsatisfied mechanics liens against the property. Ms. Benz filed a lis pendens and an action to foreclose her vendee's lien with the district court on August 12, 2009. Default judgment was entered against all of the parties with mechanics liens.

After negotiations between Ms. Benz and the Bank, the parties stipulated that the Bank could proceed with its foreclosure on the deed of trust, but if Ms. Benz's vendee's lien was found by a court to have priority over the deed of trust, the Bank would pay the full amount owed to Ms. Benz on the lien. The Bank foreclosed on its deed of trust, with the Bank as the purchaser at the foreclosure sale.

On April 5, 2010, Ms. Benz filed a summary judgment motion, asking for \$750,000.00, plus interest, to satisfy her vendee's lien. The district court found that, pursuant to Idaho Code sections 45-803 and 804, Ms. Benz had a valid vendee's lien on the property, in the amount of her prepayments. Further, the district court held that her vendee's lien has priority over the Bank's deed of trust because the bank had knowledge of the prepayment terms at the time the construction loan was made. The court also granted Ms. Benz's motion for attorney fees, pursuant to I.R.C.P. 37(c), to compensate for her attorney's time and effort spent proving the Bank had knowledge of the prepayments terms in the real estate purchase agreement.

BOISE, FRIDAY, JANUARY 13, 2012 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

MARIA GOMEZ,

Claimant-Appellant,

v.

**DURA MARK, INC., Employer, and
STATE INSURANCE FUND, Surety,**

Defendants-Respondents.

Docket No. 38809

Appeal from the Industrial Commission.

Michael, Roberts, Idaho Falls, for appellant.

Augustine Law Offices, PLLC., Boise, for respondents.

This case is an appeal of an Order Denying Reconsideration by the Industrial Commission of Appellant Maria Gomez's motion to reopen the record to allow for additional evidence on the issue of causation. The Industrial Commission previously ordered that Gomez had failed to prove the medical treatment she received for a back injury was related to an industrial accident and injury. She had injured her lower back lifting sixty-pound boxes for her employer in July 2009, and filed for workers' compensation benefits in 2010 for the medical treatment she received. At the initial hearing before an Industrial Commission Referee, Gomez introduced evidence regarding her entitlement to reasonable and necessary medical care pursuant to Idaho Code section 72-432. The referee denied Gomez's claim on the grounds of causation, finding that Gomez was not entitled to benefits because she had failed to show the causal connection between her medical treatment and her industrial injury.

On appeal, Gomez argues that her constitutional rights were violated because she had not been provided with proper notice before her hearing that evidence for causation would need to be presented. She believed that the issue of causation had been presumed between the parties because they had agreed to the issues that would be presented before the Commission. She also argues that the Industrial Commission erred by not reopening her case to allow presentation of evidence showing her medical treatment was related to her industrial injury.

BOISE, FRIDAY, JANUARY 13, 2012 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

SUZETTE Y. BOLLINGER,

Plaintiff-Appellant,

V.

**FALL RIVER RURAL ELECTRIC
COOPERATIVE, INC., an Idaho
corporation,**

Defendant-Respondent,

and

**BRYAN CASE, LARRY HAMILTON and
DOES 1-5,**

Defendants.

Docket No. 38248

Appeal from the District Court of the Seventh Judicial District, State of Idaho,
Fremont County. Hon. Darren B. Simpson, District Judge.

Cox, Ohman & Brandstetter, Chtd., Idaho Falls, for appellant.

Rigby, Andrus & Rigby, Chtd., Rexburg, for respondent.

This appeal arises from Fall River Rural Electric Cooperative, Inc.'s termination of an employee, Suzette Bollinger. Fall River hired Bollinger to work as a cashier and receptionist in October 1988. By February 2008, she had been promoted to the position of Safety & Loss/Facility Director, and her duties included reporting safety issues and overseeing Occupational Safety and Health Administration (OSHA) compliance.

Fall River's employment termination policies changed several times throughout Bollinger's employment. At the time of her hire, Fall River maintained a policy of discharging employees only for cause. It also maintained an employee seniority policy, which provided that employees would be given preference for seniority with Fall River in regard to promotions, demotions, and lay-offs. In March 2009, Fall River adopted an at-will employment policy,

allowing employees to be discharged without cause. Bollinger was discharged along with four other employees in July 2009.

Bollinger sued Fall River, claiming that it: (1) breached her employment agreement, including the covenant of good faith and fair dealing, by discharging her without cause and without regard to her seniority; (2) violated public policy by terminating her in retaliation for her reports of several safety issues; and (3) committed negligent and intentional infliction of emotional distress. The district court granted summary judgment to Fall River on all of Bollinger's claims.

Bollinger now appeals to the Idaho Supreme Court, claiming that the district court erred in its grant of summary judgment on all of Bollinger's claims. She also requests attorney fees on appeal.